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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,465	09/17/2003	John W. Schnell	PTG 02-103-6	4340
23531	7590	12/09/2005	EXAMINER	
SUITER WEST SWANTZ PC LLO 14301 FNB PARKWAY SUITE 220 OMAHA, NE 68154			TRUONG, THANH K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/664,465	Applicant(s) SCHNELL ET AL	
	Examiner Thanh K. Truong	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 13, 15, 16, 25 and 27-49 is/are pending in the application.
- 4a) Of the above claim(s) 27-49 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 13, 15, 16 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to applicant's amendment received on September 19, 2005
2. Applicant's cancellation of claims 5-12, 14, 17-24 and 26 is acknowledged.
3. Claims 27-49 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on March 28, 2005.
4. This application contains claims, 27-49, drawn to an invention nonelected with traverse in the Response to the Restriction Requirement received on March 28, 2005. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-4, 13, 15, 16 and 25 are rejected under 35 U.S.C. 102(a) as being anticipated by Chen (6,431,428).

Chen discloses an apparatus comprising:

a housing (20) suitable for storing a nail (50) and providing the nail to the nail driving assembly, and

a pick-off pivot assembly (the pivoting point to couple the magazine 20 and the barrel 16) coupled to the housing, the pick-off pivot assembly for pivotally coupling the housing to the nail driving assembly and providing the nail to the nail driving assembly,

wherein the pick-off pivot assembly enables the nail loading assembly to be positioned at various angles relative to the nail driving assembly and presents the nail to the nail driving assembly in the correct position (column 1, lines 35-41).

an adjustment assembly (figures 1-3) disposed proximal to the second end of the housing, the adjustment assembly (13, 22, 23, 132) for affixing the position of the housing relative to the nail gun (column 2, lines 29-41).

Chen further discloses: a cover coupled with the housing, the cover being removable from the housing (figure 1 shows that the cover of the housing is removable from the housing), and wherein the nail gun is a pneumatic nail gun (abstract).

Response to Arguments

7. Applicant's arguments filed September 19, 2005 have been fully considered but they are not persuasive.

8. In response to the Applicant's argument that Chen does not disclose a pick-off pivot assembly as claimed, and "no reference number, nor any further description of the pivot is provided in Chen", the examiner respectfully disagrees.

Chen discloses, among other things:

"a magazine pivotally connected to the barrel and means for positioning the magazine located in the body. The magazine can be rotated to a desired angle relative to the barrel of the pneumatic nail gun." (column 1, lines 35-39) (emphasis added).

"The magazine (20) is pivotally connected to the barrel (16) with a pivot (Ref. No. ?). A channel (202) is defined in the magazine (20) to receive the nails (50) and communicate with the barrel (16), such that the nails (50) can be pushed into the barrel (16) through the

channel (202) of the magazine (20) one after another." (column 2, lines 16-21) (emphasis added).

Although Chen does not using the term "pick-off pivot assembly", the examiner construes that the description as cited above clearly read as the "pick-off pivot assembly" as recited in claims 1 and 15.

9. In response to Applicant's argument that Chen does not disclose the detailed description of the structure of the pick-off pivot assembly such as for example:

"the structure of the pick-off assembly of the present invention terminates the track of a nail just before the nail enters a driver blade bore. (Present Application, Page 12, Paragraph 0027)", and

"This results in nails being "picked-off" of the nail strip and presented in a better ("correct") firing position as compared to conventional nail guns, which allow the nail to contact an opposite wall of the driver blade bore. (Present Application, Page 12, Paragraph 0027 and Page 13, Paragraph 0029)".

Applicant misinterprets the principle that claims are interpreted in the light of the specification. Although the element such as the pick-off pivot assembly is found as examples or embodiments in the specification, they were not claimed explicitly. Nor were the words that are used in the claims defined in the specification to require these limitations. A reading of the specification provides no evidence to indicate that these limitations must be imported into the claims to give meaning to disputed terms. *Constant v. Advanced Micro-Devices, Inc.*, 7 USPQ2d 1064.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO


MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K. Truong whose telephone number is 571-272-4472. The examiner can normally be reached on Mon-Thru 8:00AM - 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tkk
November 30, 2005.


Stephen F. Gerrity
Primary Examiner

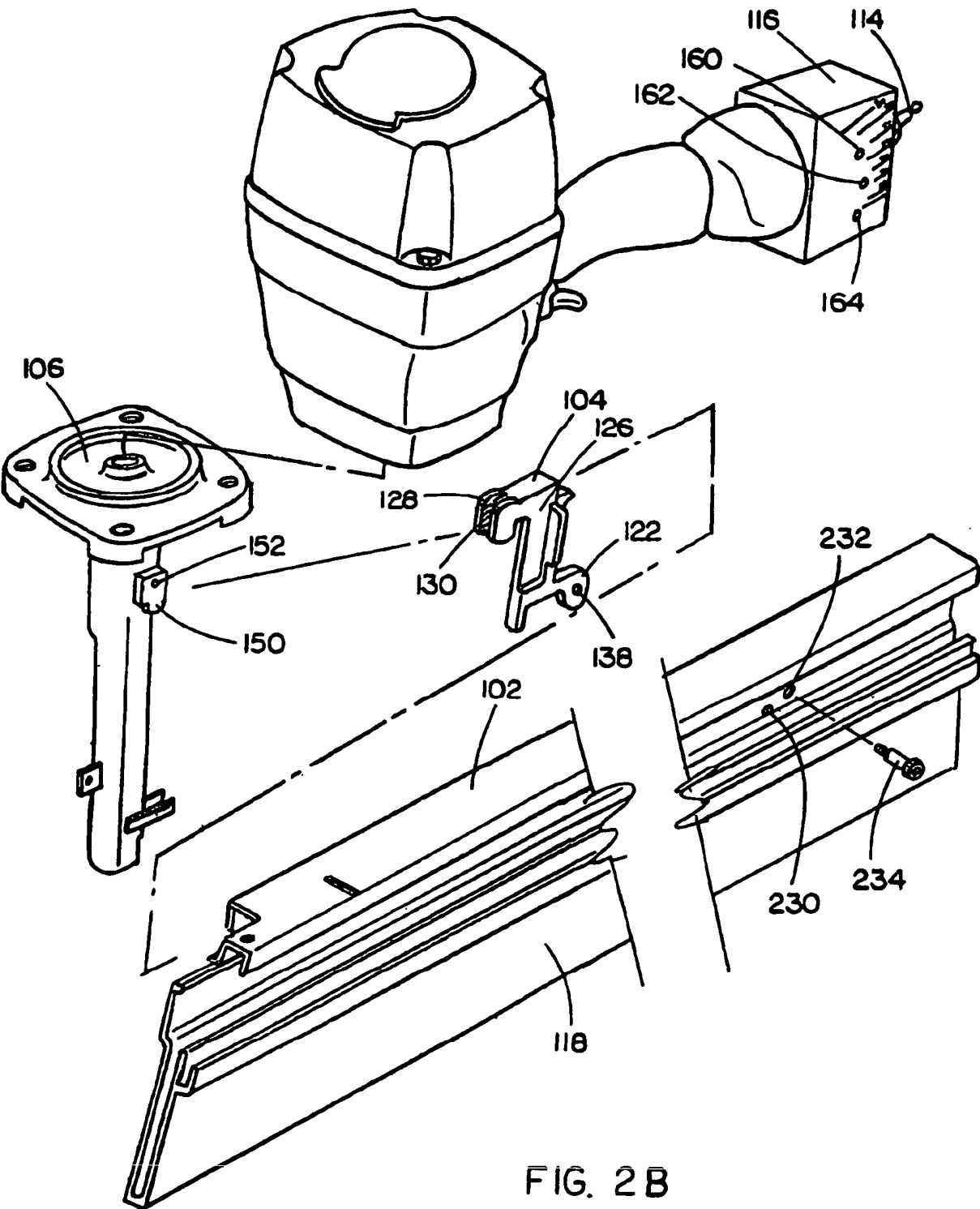


FIG. 2 B

DRAWING APPROVED 11/30/05 HKT



DRAWING APPROVED 11/30/05 TRG

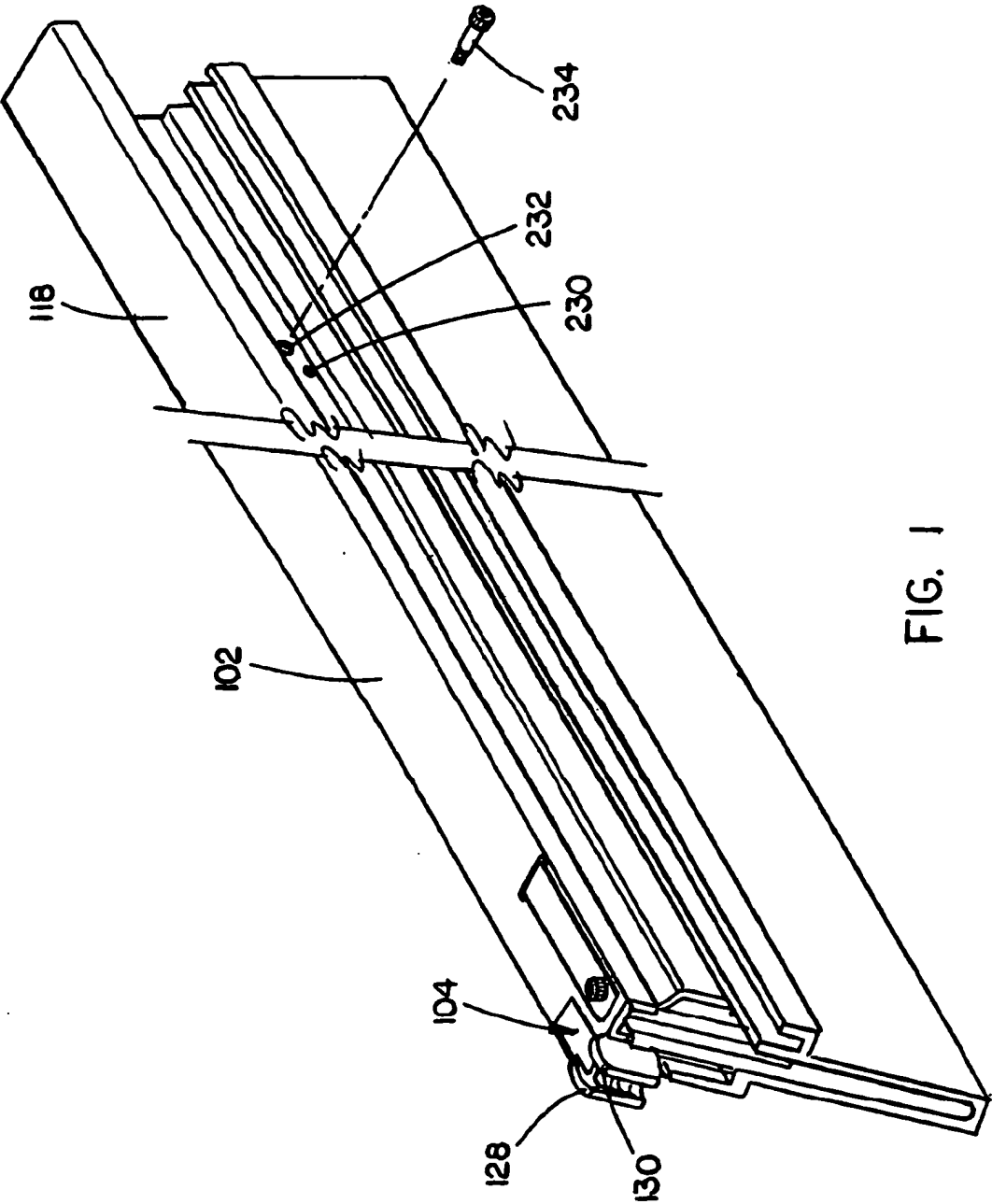


FIG. 1